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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ELAINE MORENO, Plaintiff, v. SYNCHRONY BANK, Defendant.	Case No.: COMPLAINT AND DEMAND FOR JURY TRIAL 1. TCPA, 47 U.S.C. § 227 2. RFDCPA, Cal. Civ. Code § 1788 (Unlawful Debt Collection Practices)

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Elena Moreno ("Plaintiff"), through her attorneys, alleges the following against Defendants, Synchrony Bank ("Synchrony" or "Defendant"):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based upon the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. The TCPA is a federal statute that broadly regulates the use of automated telephone equipment. Among other things, the TCPA prohibits certain unsolicited marketing calls, restricts the use of automatic

dialers or prerecorded messages, and delegates rulemaking authority to the Federal Communications Commission (“FCC”).

2. Count II of Plaintiff’s Complaint is based upon Rosenthal Fair Debt Collection Practices Act (“RFDCPA”), CAL. CIV. CODE § 1788, which prohibits debt collectors from engaging in abusive, deceptive and unfair practices in connection with the collection of consumer debts.

JURISDICTION AND VENUE

3. Jurisdiction of the Court arises under 47 U.S.C. §227 et seq. and 28 U.S.C. 1331.
4. Venue is proper pursuant to *28 U.S.C. 1391(b)(2)* in that a substantial part of the events or omissions giving rise to the claim occurred in this District.
5. Defendant transacts business here; personal jurisdiction is established.

PARTIES

6. Plaintiff is a natural person residing in Palmdale, Los Angeles County, California.
7. Plaintiff is a debtor as defined by *Cal. Civ. Code § 1788.2(h).*
8. Defendant, Synchrony, is a creditor engaged in the business of giving loans and managing credit accounts with its principal place of business located in Draper, Utah. Defendant can be served with process at CT Corporation System, 818 W. 7th Street, Suite 930, Los Angeles, CA 90017.
9. Defendant is a debt collector as that term is defined by Cal. Civ. Code §1788.2(c).
10. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

11. Defendant is attempting to collect a debt from Plaintiff.

12. In or around November 2016, Defendant began placing calls to Plaintiff's cellular phone number (818) 800-9260, in an attempt to collect an alleged debt.

13. The calls originated from: (866) 652-3135; (877) 317-5659; and (678) 518-2904; upon information and belief, these numbers are owned or operated by Defendant.

14. On or about November 27, 2016, at 9:25 a.m., Plaintiff answered a call from Defendant originating from (866) 652-3135; Plaintiff heard a pause before the collection agent began to speak, indicating the use of an automated telephone dialing system.

15. Defendant's representative informed Plaintiff that it was attempting to collect a debt.

16. Plaintiff unequivocally revoked consent to be called any further.

17. Despite Plaintiff's revocation, Defendant continued to place calls to Plaintiff's cellular phone.

18. On or about December 4, 2016, at 11:02 a.m., Plaintiff answered a call from Defendant originating from (678) 518-2904. Plaintiff then revoked consent to be contacted further for the second time.

19. On or about December 6, 2016, at 9:17 a.m., Plaintiff answered another call from Defendant originating from (877) 317-5659. Plaintiff revoked consent to be contacted further for the third time.

20. Plaintiff's repeated requests not to be contacted were ignored, as she continued to receive calls from Defendant.

21. On or about December 17, 2016, Plaintiff was called by Defendant four different times at 8:39 a.m., 10:28 a.m., 11:19 a.m., and 12:52 p.m. These calls all originated from (877) 317-5659.

22. The next day, December 18, 2016, Plaintiff was contacted by Defendant five times at 9:42 a.m., 10:45 a.m., 11:56 a.m., 1:20 p.m., and 2:56 p.m. These calls all originated from (877) 317-5659.

23. Plaintiff was called at least three times every day during between December 16, 2016 and January 2, 2017, with the exception of Christmas Day.

24. On or about January 3, 2017, at 8:24 a.m., Plaintiff answered another call from Defendant originating from (877) 317-5659. Plaintiff revoked consent to be contacted further for the fourth time.

25. Between November 27, 2016 and January 3, 2017, Defendant called Plaintiff on her cellular phone approximately ninety (90) times.

26. During the same time period, Defendant left Plaintiff at least five (5) voicemail messages on Plaintiff's cellular phone.

27. As a result of Defendant's conduct, Plaintiff has sustained actual damages including but not limited to, emotional and mental pain and anguish.

28. Plaintiff has been increasingly stressed out and has become fearful of the phone calls.

29. The phone calls have affected Plaintiff's work by ringing during her working hours and causing Plaintiff to silence her phone.

COUNT I

(Violations of the TCPA, 47 U.S.C. § 227)

30. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

31. Defendant violated the TCPA. Defendant's violations include, but are not limited to the following:

a) Within four years prior to the filing of this action, on multiple occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent part, "It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express consent of the called party) using any automatic telephone dialing system or an artificial or prerecorded voice — to any telephone number assigned to a . . . cellular telephone service . . . or any service for which the called party is charged for the call.

b) Within four years prior to the filing of this action, on multiple occasions, Defendant willfully and/or knowingly contacted Plaintiff at Plaintiff's cellular telephone using an artificial prerecorded voice or an automatic telephone dialing system and as such, Defendant knowing and/or willfully violated the TCPA.

32. As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is entitled to an award of five hundred dollars ($500.00) in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the Court finds that Defendant knowingly and/or willfully violated the TCPA, Plaintiff is entitled to an award of one thousand five hundred dollars ($1,500.00), for each and every violation pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

COUNT II

(Violations of the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788)

33. Plaintiff incorporates herein by reference all of the above paragraphs of this complaint as though fully set forth herein at length.

34. Defendant violated the RFDCPA. Defendant's violations include, but are not limited to, the following:

    a) Defendant violated Cal. Civ. Code § 1788.11(d) by causing a telephone to ring repeatedly or continuously to annoy the person called;

    b) Defendant violated Cal. Civ. Code § 1788.17 by collecting or attempting to collect a consumer debt without complying with the provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of the United States Code (Fair Debt Collection Practices Act).

i. Defendant violated Cal. Civ. Code § 1788.17 by violating 15 U.S.C. § 1692d by engaging in conduct, the natural consequence of which is to harass, oppress or abuse any person in connection with the collection of the alleged debt; and

ii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or engaging Plaintiff in telephone conversations repeatedly;

iii. Defendant violated CAL. CIV. CODE § 1788.17 by violating 15 U.S.C. § 1692f by using unfair or unconscionable means in connection with the collection of an alleged debt; and

35. Defendant's acts, as described above, were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

36. As a result of the foregoing violations of the RFDCPA, Defendant is liable to Plaintiff for actual damages, statutory damages, and attorneys' fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, Elaine Moreno, respectfully requests judgment be entered against Defendant Synchrony Bank for the following:

A. Declaratory judgment that Defendant violated the RFDCPA;

B. Statutory damages of $1,000.00 pursuant to the Rosenthal Fair Debt Collection Practices act, Cal. Civ. Code §1788.30(b);

C. Actual damages pursuant to Cal. Civ. Code §1788.30(b);

D. Costs and reasonable attorneys' fees pursuant to the Rosenthal Fair Debt Collections Practices Act, Cal. Civ. Code §1788.30(c);

E. Statutory damages pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C);

F. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law; and

G. Any other relief that this Honorable Court deems appropriate.

RESPECTFULLY SUBMITTED,

Dated: April 6, 2017

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